

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

VAN AKEN A1, LLC d/b/a VAN AKEN DISTRICT	)	CASE NO.
50 Public Square, Suite 1600	)	
Cleveland, Ohio 44113	)	JUDGE
	)	
<i>Plaintiff,</i>	)	
	)	
vs.	)	
	)	
CONTINENTAL ENTERPRISES, LTD.	)	
d/b/a VAN AKEN DISTRICT	)	
APARTMENTS I f/k/a CONTINENTAL	)	
LUXURY APARTMENTS,	)	
c/o Alan G. Pearlman	)	
32575 Trailwood Court	)	
Solon, Ohio 44139,	)	
	)	
PEDRA PROPERTIES, LLC d/b/a VAN	)	
AKEN DISTRICT APARTMENTS II f/k/a	)	
SHAKER REGENCY APARTMENTS,	)	
c/o Alan G. Pearlman, statutory agent	)	
3210 Warrensville Center Road	)	
Shaker Heights, Ohio 44122, and	)	
	)	
ALAN G. PEARLMAN,	)	
32575 Trailwood Court	)	
Solon, Ohio 44139,	)	
	)	
<i>Defendants.</i>	)	<b><u>COMPLAINT</u></b>

For its Complaint against Defendants Continental Enterprises, Ltd., Pedra Properties, LLC, and Alan G. Pearlman, Plaintiff Van Aken A1, LLC d/b/a/ Van Aken District alleges as follows:

**COUNT I**  
**(Violation of Lanham Act)**

**Parties**

1. Plaintiff Van Aken A1, LLC d/b/a Van Aken District (“A1”) is an Ohio limited liability company that, along with several affiliates, including RMS Investment Group, LLC, RMS Investment Corp. (“RMS”) and Van Aken BC, LLC, is involved in the commercial and residential development known as the Van Aken District located at the northwest intersection of Chagrin Boulevard and Warrensville Road in Shaker Heights, Ohio (the “Project”). A1 owns a portion of the real estate on which the development is located. A1 and its affiliates are constructing retail space and residential apartments on the real estate owned by A1. The property owned by Van Aken BC, LLC will have traditional retail as well as office tenants.

2. Continental Enterprises, Ltd. (“Continental”), is an Ohio limited liability company that owns a residential apartment complex located at 3341 and 3351 Warrensville Center Road, Shaker Heights, OH 44122 in close geographical proximity to the Project.

3. Pedra Properties, LLC (“Pedra”) is an Ohio limited liability company that owns a retail apartment complex located at 3208 and 3210 Warrensville Center Road, Shaker Heights, Ohio 44122 also in close geographical proximity to the Project.

4. Alan G. Pearlman (“Pearlman”) is an individual residing at 32575 Trailwood Court, Solon, Ohio 44139, and he is the majority owner and manager of Continental and Pedra.

**Jurisdiction and Venue**

5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1331 and 15 U.S.C. §1121 because this is an action arising under the laws of the United States and specifically under 15 U.S.C. §1125.

6. Venue is proper in the Northern District of Ohio pursuant to 28 U.S.C. §1391 because the defendants reside in Northern District of Ohio and a substantial part of the events giving rise to the claims in this action occurred in Northern District of Ohio.

### **Facts**

#### **Development of the Van Aken District**

7. In July 2000, the City of Shaker Heights adopted a strategic plan that recommended reconfiguring the Chagrin/Warrensville/Van Aken intersection to facilitate private development of a mixed-used downtown with improved pedestrian and transit connections.

8. In April 2008, the Warrensville/Van Aken Transit-Oriented Development Plan outlined the major infrastructure and roadwork changes proposed to set the stage for new development of retail stores, offices, and housing in the area.

9. In December 2013, RMS signed a Memorandum of Understanding with the City of Shaker Heights to make the first phase of the district redevelopment a reality. This ambitious, \$100+ million development project will include apartments, office space, and retail tenants.

10. In August 2014, RMS adopted “The Van Aken District” (the “Mark”) as the mark that it would use to identify the project, and it registered and began using the domain name [thevanakendistrict.com](http://thevanakendistrict.com). The following is a depiction of the logo adopted by RMS and licensed for use by A1 and its affiliates:



11. In October 2015, RMS formed A1 to be the entity that would own and build the portion of the project that would include residential apartments.

12. A1 and its affiliates have utilized the “Van Aken District” Mark continuously since 2014 to market the Project both locally and nationwide. In addition to the use of the Mark in a domain name and on a website, A1 and its affiliates use the Mark on various social media accounts like Twitter and Instagram: <https://twitter.com/vanakendistrict?lang=en> and <https://www.instagram.com/thevanakendistrict/>.

13. In January 2016, the following onsite signage was installed at the Project site identifying it as “The Van Aken District:”



14. Since that time, A1 and its affiliates have held several community outreach events at the Project site to further promote its redevelopment, to foster community engagement, and to increase the brand awareness of the “Van Aken District” Mark.

15. As a result of these efforts, the general public and consumers have come to recognize the “Van Aken District” Mark as synonymous with the mixed-use development Project led by A1 and its affiliates.

16. The Project's residential apartment complex will be known as "Upstairs at Van Aken." The apartment complex is owned by A1 and is in the process of leasing space to prospective tenants. The apartment complex is expected to open later this year. A1 has been marketing the Van Aken District's apartments to potential tenants located in Ohio as well as other states and countries. Potential tenants for the apartments include individuals who would relocate from other states and countries to work at places like the Cleveland Clinic and University Hospitals.

Defendants' Unfair Competition

17. Continental has owned the apartment complex located at 3341 and 3351 Warrensville Road, Shaker Heights, Ohio 44122, since March 14, 1984. For more than thirty-three years, until November 26, 2017, that apartment complex was known as The Continental Luxury Apartments. The following shows the signage for the Continental apartment complex prior to November 27, 2017:



18. On November 27, 2017, Continental changed the name of its apartment complex to Van Aken District Apartments I. The following is a picture of the new sign for the Continental apartment complex:



*Van Aken* <sup>DIST.</sup>

As can be seen by a visual comparison of this signage to the Mark, Continental is using a font and style for its signage that mimics the font and style utilized by A1 and its affiliates in connection with the Mark.


19. Pedra has owned the apartment complex located at 3208 and 3210 Warrensville Road, Shaker Heights, Ohio 44122, since January 29, 2004. For more than fourteen years, until November 26, 2017, that complex was known as the Shaker Regency Apartments. The following is a picture of the signage for the Pedra apartment complex prior to November 27, 2017:



20. On November 27, 2017, Pedra changed the name of its apartment complex to Van Aken District Apartments II. The following is a picture of the new signage for the Pedra apartment complex:





As can be seen by a visual comparison of this signage to the Mark, , Pedra is using a font and style for its signage that mimics the font and style utilized by A1 and its affiliates in connection with the Mark.

21. On November 27, 2017, Pearlman registered the trade name “Van Aken District Apartments” with the Ohio Secretary of State’s office and claimed a date of first use of November 26, 2017. Pearlman indicated that he would use the trade name in connection with “real estate management and services.”

22. On November 27, 2017, Pearlman filed an application with the United States Patent and Trademark Office (“USPTO”) to register “Van Aken District Apartments” as a trademark for “management of apartments.”

23. In that USPTO application, Pearlman signed a declaration stating that “no other person has the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion.” Pearlman made that representation with actual knowledge of the nearby Project, located less than one mile from the Continental and Pedra apartment complexes. The Continental and Pedra apartment complexes and A1 compete in the same geographic marketplace.

24. Defendants' website uses the URL [www.vanakendistrictapartments.com](http://www.vanakendistrictapartments.com). On that website, Defendants advertise that "Van Aken District Apartment I is across the street from the Van Aken District, the new downtown of suburban Shaker Heights, consisting of retail commercial and apartments." They further advertise that their newly renamed apartment complexes are only a "few minutes walk" from the Van Aken District.

25. Defendants are competing with A1 to acquire tenants to occupy apartments within and near the Van Aken District Project. The potential tenants for whom the parties are competing are located both in Ohio and other states and countries.

26. Defendants' conduct, as outlined, in part, above, is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Defendants with A1.

27. Defendants' conduct, as outlined, in part, above, is likely to cause confusion as to the origin of Defendants' apartment leasing services.

28. Defendants' conduct, as outlined, in part, above, is likely to cause confusion as to whether Defendants' apartment complexes are sponsored or approved by A1 or are otherwise somehow affiliated with A1.

29. Defendants' conduct, as outlined, in part, above, has caused actual confusion as to whether Defendants' apartment complexes are affiliated with A1 and the Project. For example, in February 2018, an A1 representative received an email from a potential tenant who stated, in part:

I do have a question about something I saw on line recently, while doing a search for apartments in Shaker Heights. A listing came up as Van Aken District I & II, but directed people to the site of Premier Properties, managed by Alan Pearlman. Having recently moved out of one of his properties, the Shaker Regency . . . I was concerned that he was misrepresenting your rental properties and/or your trade name. If you are working with Alan Pearlman, then I stand corrected, but if not, I suggest you investigate what appears to be a deception, in order to direct the traffic of prospective renters to his properties. As I write this, he is already in the process of changing the sign in front of the Shaker Regency property (3210 and 3208 Warrensville Center Rd., Shaker Heights).



Mr. Pearlman has a horrible reputation in the tenant community ... there is actually a website dedicated to him, and is filled with testimonials of tenants who have be duped, deceived, and otherwise mistreated by him. Many were foreign students who were residents at the Cleveland Clinic and were treated outrageously, along with their families. Unfortunately, I have personally experienced his bullying, dishonest behavior, as a former tenant.

A copy of the email is attached as Exhibit A.

30. In March, 2018, A1 received a follow up email with the URL for the website detailing the complaints against Pearlman which stated: “Information about a landlord, Alan Pearlman, and property management company that seems to be taking advantage of the name of your development. If he is in partnership with the Van Aken District, then ignore this message.” See Exhibit A.

31. On March 7, 2018, A1 sent a cease-and-desist letter to Pearlman to request that the Defendants immediately cease from using “Van Aken District Apartments I” and “Van Aken District Apartments II.” A copy of that letter is attached as Exhibit B. Defendants ignored that letter and continue their misuse of the Van Aken District Mark.

32. A1 is currently involved in its “lease-up” phase for its apartment units. The 2018 and 2019 calendar years are crucial for acquiring tenants and ensuring the financial viability of the Project.

33. As a result of Defendants’ conduct, as outlined, in part, above, Defendants have violated 15 U.S.C §1125(a). A1 has been damaged as a result of Defendants’ violation of 15 U.S.C §1125(a) in an amount not presently known, but believed to exceed \$25,000.

34. A1 will be irreparably harmed unless Defendants are enjoined from further violations of 15 U.S.C §1125(a).

**COUNT II**  
**(Violation of Lanham Act)**

35. A1 incorporates by reference the allegations in paragraphs 1 through 34 of this Complaint.

36. In addition to causing confusion as to the origin of their services, Defendants are advertising that their apartment complexes have “similar amenities” at “approximately half the cost.” These statements are false or misleading. Defendants’ apartment complexes do not have “similar amenities” to those being offered by the A1 apartments.

37. Defendants have made false or misleading statements of fact in commercial advertisements and promotions that deceive or are likely to deceive in a material way. Those false or misleading statements have been made to customers in Ohio as well as customers in other States and countries. Defendants’ false or misleading statements have or are likely to cause competitive or commercial injury to A1. As a result, Defendants have violated 15 U.S.C §1125(a).

38. A1 has been damaged as a result of Defendants’ violation of 15 U.S.C §1125(a) in an amount not presently known, but believed to exceed \$25,000.

39. A1 will be irreparably harmed unless Defendants are enjoined from further violations of 15 U.S.C §1125(a).

**COUNT III**  
**(Trademark Infringement)**

40. A1 incorporates by reference the allegations in paragraph 1 through 39 of this Complaint.

41. A1 is the senior user of the “Van Aken District” Mark and has continually used the Mark since at least January 2016 in advertising, onsite signage at its Project, as well as the Van Aken District’s website at [www.thevanakendistrict.com](http://www.thevanakendistrict.com), and in various other social media sites and outlets.

42. A1 actively promoted the Van Aken District throughout Northeast Ohio since at least January 2016, holding various community events at the Van Aken District to promote the Mark solidify its brand and foster community engagement.

43. The general public strongly associates the Mark with A1. The general public in the area have come to recognize the Van Aken District as an established and beneficial mixed-use development in the community.

44. By willfully and knowingly renaming the Continental and Pedra apartment complexes as Van Aken District I and Van Aken District II, Defendants are infringing A1's common law trademark rights and engaging in unfair competition. By mimicking the font and style of the Mark, Defendants are infringing A1's trade dress.

45. By using the names Van Aken District I and Van Aken District II, and by using a similar font and style on their signs, Defendants are likely to cause and have caused actual confusion among potential tenants for the competing apartment complexes.

46. Defendants use of the names Van Aken District I and Van Aken District II and their misuse of A1's trade dress is causing injury to A1 in the form of lost tenants, damage to its goodwill, and dilution of its senior Mark.

47. A1 has been damaged as a result of Defendants' infringing activities and unfair competition in an amount not presently known, but believed to exceed \$25,000.

48. A1 will be irreparably harmed unless Defendants are enjoined from further infringing activity and unfair competition.

**COUNT IV**  
**(Violation of the Ohio Deceptive Trade Practices Act)**

49. A1 incorporates by reference the allegations in paragraph 1 through 48 of this Complaint.

50. The Defendants conduct, as outline in part above, violates the Ohio Deceptive Trade Practices Act, R.C. § 4165.02(A) *et seq.* (“ODTPA”), by causing confusion and misunderstanding in the marketplace and on the internet, including through their use of the [www.vanakendistrictapartments.com](http://www.vanakendistrictapartments.com) domain name.

51. The Defendants’ conduct is willful and intended to take advantage of the goodwill developed by A1.

52. A1 has been damaged as a result of Defendants’ violation of the ODTPA in an amount not presently known, but believed to exceed \$25,000.

53. A1 will be irreparably harmed unless Defendants are enjoined from further violations of the ODTPA.

54. As a result of Defendants’ willful violations of the ODTPA, A1 is entitled to recover its legal fees and other costs of this litigation.

### **PRAYER FOR RELIEF**

WHEREFORE, A1 prays for relief as follows:

- A. Judgement against the Defendants, jointly and severally, for the amount of A1’s actual damages, as shown at trial;
- B. A preliminary and permanent injunction restraining the Defendants and their agents, employees, officers, directors, owners, representatives, successor companies, affiliates, subsidiaries and related companies, and all persons acting in concert or participation with each of them, from:
  - i. using the trade name and/or trade or service mark “Van Aken District” in conjunction with marketing, advertising, renting, selling, leasing, or offering for rent apartment units or real estate owned or operated by the Pearlman Defendants;
  - ii. otherwise further diluting and infringing the Mark;
  - iii. using in any manner the URL [www.vanakendistrictapartments.com](http://www.vanakendistrictapartments.com);
  - iv. registering or pursuing registration of the trade name or trade mark “Van Aken District” for protection with the United States Patent and Trademark Office;

- v. competing unfairly with A1;
  - vi. falsely designating the origin of the Defendants' apartment units;
  - vii. engaging in deceptive trade practices in violation of Ohio common law or Ohio Revised Code § 4165.01 *et seq.*;
- C. A permanent injunction requiring the Defendants to cancel the tradename registration with the Ohio Secretary of State of the tradename Van Aken District Apartments;
- D. A permanent injunction requiring the Defendants to destroy any and all materials in their possession, custody or control bearing a colorable imitation or infringement of the Mark, including removal of all infringing signage on the Continental or Pedra apartment complexes and their websites;
- E. An order requiring the Defendants to provide a complete accounting of and to disgorge any and all profits derived from the sale of any goods or services under any trade name or mark that is confusingly similar to the Mark;
- F. An order requiring the Defendants to file with this Court and serve on A1 within thirty days of the entry of a final judgment in this case a report setting forth the manner and form in which the Defendants have complied with this injunction;
- G. Judgment against the defendants, jointly and severally, for enhanced damages and attorneys' fees; and,
- H. For such other and further relief as this Court deems appropriate.

/s/ James B. Niehaus

James B. Niehaus (0020128)

Mark L. Rodio (0065134)

Adam J. Russ (0079648)

FRANTZ WARD LLP

200 Public Square, Suite 3000

Cleveland, OH 44114

Phone: (216) 515-1640

Fax: (216) 515-1650

Email: jniehaus@frantzward.com

mrodio@frantzward.com

aruss@frantzward.com

*Attorneys for Plaintiff*

*Van Aken A1, LLC d/b/a Van Aken District*